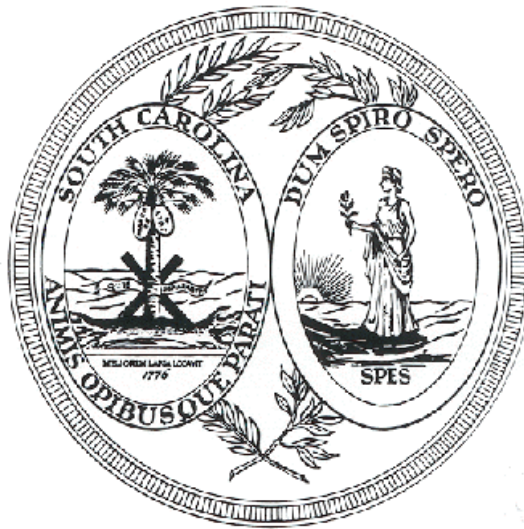


LAC

Report to the General Assembly

July 2002

An Administrative Review of the Department of Commerce



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Authorized by §2-15-10 *et seq.* of the South Carolina Code of Laws, the Legislative Audit Council, created in 1975, reviews the operations of state agencies, investigates fiscal matters as required, and provides information to assist the General Assembly. Some audits are conducted at the request of groups of legislators who have questions about potential problems in state agencies or programs; other audits are performed as a result of statutory mandate.

The Legislative Audit Council is composed of five public members, one of whom must be a practicing certified or licensed public accountant and one of whom must be an attorney. In addition, four members of the General Assembly serve ex officio.

Audits by the Legislative Audit Council conform to generally accepted government auditing standards as set forth by the Comptroller General of the United States.

Copies of all LAC audits are available to the public at no charge.

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Synopsis

Members of the General Assembly requested that the Legislative Audit Council conduct an audit of the South Carolina Department of Commerce (Commerce). The review focused on whether the department's administrative expenditures have been reasonable and if controls were adequate to ensure appropriate accountability. We found that the department has not emphasized cost-effectiveness in its operations, and some expenditures of public funds were not authorized by law.

- ❑ In 2001 the department completed work on a \$1.9 million presentation center where information about South Carolina could be conveyed to industrial prospects using state-of-the-art audiovisual equipment. The agency had no formal budget for the project. When the General Assembly did not appropriate funds for the center, Commerce obtained funds from the Coordinating Council for Economic Development and the department's division of public railways.
- ❑ Commerce made decisions on equipment, furniture, and construction that significantly increased the cost of the presentation center. The department spent over \$80,000 on video conferencing equipment that was unnecessary and has been dismantled. Overall, the department spent almost \$800,000 renovating office space that is not state property. As of early 2002, usage of the center has been limited.
- ❑ To supplement its revenue, Commerce solicits contributions from businesses and other organizations for its Special Events Fund. This practice creates a conflict of interest because Commerce officials have the authority to influence public subsidies for the organizations from which they solicit contributions. Some of the department's expenditures for parties, picnics, lunches, dinners, and gifts for its employees were inappropriate uses of public funds and violated state law. For example, the department spent more than \$5,000 for an employee picnic and more than \$10,000 for dinner and alcohol for a staff Christmas party.
- ❑ Some Department of Commerce employees were reimbursed for "prospect expenses" when no prospects were present. Also, we could not identify any legal authority for the department to fund state employees' meals when they are not traveling or to pay for meals in excess of state limits.
- ❑ We did not identify material noncompliance in a sample of the department's travel vouchers. However, the department's expenditures highlighted areas where the state could exercise more cost-effective management. In contrast to other states and the federal government, South Carolina has no limits on reimbursements for lodging expenses. Commerce employees sometimes spent more than twice the federal limits for lodging.

- ☐ The department's expenditures for commercial airline tickets illustrate why a state contract for airfare would be beneficial. Commerce staff sometimes have to travel at the last minute and change plans with little notice, causing them to pay high fares. The federal government and other southeastern states have contracts for airfare that increase convenience and result in significant savings. Because all of state government spent more than \$8.3 million for airfare in FY 00-01, the potential for savings is great.
- ☐ The department spent too much for the cars it leases from the Budget and Control Board. In FY 00-01, Commerce spent 47¢ per mile for the cars it leased. It could have saved approximately \$60,000 if it had reimbursed its employees for the use of their own vehicles instead of leasing cars. Commerce should monitor costs and reduce the cost per mile.
- ☐ The department uses its own aircraft for some of its travel. We found that the agency has not reported the full cost of operating and owning its aircraft. In FY 00-01, operating costs ranged from \$1,814 to \$3,877 per flight hour. We also identified some high-cost flights that indicate a need for the department to give greater attention to the use of its aircraft and consider less expensive alternatives.
- ☐ The Department of Commerce adequately responded to citizens' requests for public information submitted from FY 96-97 through FY 00-01. Amendments to the Freedom of Information Act (FOIA) in 1998 required the department to disclose more information about incentives offered to prospective industries. However, there may be a need for increased disclosure. Commerce does not disclose company-specific information regarding prospects that decide not to locate in South Carolina. Also, we found the department charged some requesters but not others for processing information requests.
- ☐ We reviewed a sample of the department's contracts for professional services and found that the services were provided. While we did not find material problems with contract management, in some cases the department reimbursed its contractors for travel expenses that could be considered excessive.
- ☐ We found that expenditures from the state aviation fund, used for airport maintenance around the state, were appropriate. However, the ability to carry forward state appropriations for airport capital improvements is needed to complete ongoing projects.

Introduction

Audit Objectives

Members of the General Assembly requested the Legislative Audit Council to conduct an audit of the Department of Commerce. The audit focused on whether the department's administrative expenditures have been reasonable and if controls were adequate to ensure appropriate accountability. Our audit objectives are listed below.

- ☐ Review the planning, procurement, cost and use of the Department of Commerce's new presentation rooms. Determine whether the expenditures were reasonable and whether more cost-effective alternatives existed.
- ☐ Review the purpose, legal authority, and uses of the Department of Commerce's Special Events Fund to determine its propriety.
- ☐ Determine whether the Department of Commerce has allocated nonappropriated state funds for purposes that are consistent with state law.
- ☐ Review travel by Department of Commerce officials from FY 96-97 through FY 00-01. Determine whether the department has complied with state law and has adequate cost controls.
- ☐ Review the use and cost of aircraft managed by the Department of Commerce from FY 96-97 through FY 00-01. Determine whether the department has managed this function effectively.
- ☐ Determine whether the Department of Commerce has used its exemptions to the Freedom of Information Act appropriately and allowed adequate public scrutiny to ensure accountability.
- ☐ Determine whether the Department of Commerce has appropriate controls over its expenditures for consultants and other contracted services.

Background

Created by the Government Restructuring Act of 1993, the Department of Commerce is comprised of the former State Development Board, the Aeronautics Commission, the Public Railways Commission, the Governor's Community Development Block Grant Program, the Savannah Valley Development Authority, and (since 1999) the State Film Office. The department also provides administrative support to the Coordinating Council for Economic Development. The department is headed by the Secretary of Commerce and is a part of the Governor's cabinet.

The primary mission of the Department of Commerce is economic development. The department focuses on job creation, capital investment, new industry locations, community and rural development, industry retention, and industry expansion.

In FY 00-01, the department's total expenditures were almost \$93 million, of which \$15.4 million (17%) was state general funds. Approximately \$71.8 million (77%) was distributed to government subdivisions. The average number of Commerce employees in FY 00-01 was 224 (including 16 temporary employees).

The department's main office is located in downtown Columbia. The aeronautics division is housed at Columbia Metropolitan Airport and the public railways division is located in Charleston. The department also has offices in Munich, Germany, and Tokyo, Japan.

Presentation Center

In 2001 the Department of Commerce completed work on a \$1.9 million “presentation center,” where information about South Carolina could be conveyed to industrial prospects using state-of-the-art audiovisual equipment. We found little evidence that the department was concerned with cost-effectiveness throughout the planning and execution of this project. The agency had no formal budget for the project and purchased expensive furniture and added other unique items to impress prospects. The department also made decisions that increased costs, such as enlarging the size of the projection screens and purchasing equipment that has since been dismantled to perform video conferencing. As of early 2002, usage of the center has been limited, and the department has not marketed the facility for use by other agencies.

Background and Source of Funds

In 1999 the Department of Commerce began work on a presentation center where officials of companies being recruited to the state could view interactive presentations.

The department has a Geographic Information System (GIS), a computer system capable of assembling, storing, manipulating, and displaying information about specific geographical locations. The system can retrieve detailed data about potential industrial sites and allows Commerce to provide clients with timely, high-quality information. According to an agency official, the department’s old presentation room was outdated, and they avoided showing clients presentations on the GIS. They wanted a facility that could effectively convey the high-quality data their GIS provides.

The presentation center was completed in August 2001. It has four presentation rooms and is approximately 3,000 square feet. The main room is a theater that seats twenty-five at conference tables and fifty in theater-style seating. The room has three large screens and is fully equipped for multipoint video and audio conferencing. It can accommodate any form of video media, such as domestic and international videotapes or DVD, and it is wired for computer-based presentations and Internet access.

The two smaller conference rooms are designed for smaller meetings and may serve as overflow for the larger room. Both rooms are wired into the computer network, have teleconferencing capabilities, and can receive the video conferencing feed and audio from the main theater.

There is also an internal preparation room that was designed for department staff to collaborate on presentations. The room contains a pair of computer servers and two 50-inch, wall-mounted plasma video screens.

The presentation center also contains a kitchen for light food preparation. The kitchen, which was included to accommodate lunches or after hour meetings, consists of a refrigerator, dishwasher, cabinets and warming plates.

Planning

Although a department official made an informal cost estimate, Commerce did not have a formal budget for the presentation center. According to department records, the agency spent a total of \$1,808,084 on its presentation center as of December 5, 2001. This total included the construction, hardware and software, installation, and the furniture for the center. It did not include the three-year maintenance contract for the equipment, which would increase the total to approximately \$1,939,000.

Source of Funding

The General Assembly did not appropriate funds for the presentation center; therefore, Commerce obtained most of the funds from related entities that are part of the agency (see Table 2.1). In its FY 99-00 budget request the agency asked for \$600,000 in nonrecurring funds to completely renovate and equip a room for prospect presentations. Officials stated they did not have a state-of-the-art presentation center to show prospects the advantages of investing in South Carolina, and they were concerned that their competitors were far ahead of them in this respect. The General Assembly did not appropriate funds for the project, so Commerce obtained funds from other sources.

The largest source of funds was the department's Coordinating Council for Economic Development. The council is responsible for the allocation of financial incentives to improve infrastructure for the construction or expansion of industry in South Carolina. The coordinating council had received a supplemental state appropriation of \$30,712,450 in FY 96-97. There were no restrictions placed on the funds except that they be used "for economic development." In June 1999, the coordinating council agreed to give \$600,000 to the presentation center; officials expected the additional funds to come from private funding. The council agreed that should Commerce not be able to raise the funds from private donations it would contribute another \$600,000 towards the center. In September 1999, department officials told the council that because of the critical time frame it was necessary for the council to fund the entire project. The Secretary of Commerce said that the department would attempt to raise \$600,000 from private funds and as it received the donations the funds would be returned to

the council's account. The council agreed to contribute an additional \$600,000 for a total of \$1.2 million.

The second largest source of funds was the department's public railways division, which contributed \$800,000. The division's mission is to operate all state-owned rail facilities. The Secretary of Commerce stated that the railways division is under the Department of Commerce and its resources may be taken into consideration in funding anything that benefits the agency. When private funds were not donated for the project and the railways division had available resources, the secretary instructed that \$800,000 be transferred from railways to fund the presentation center.

An additional \$100,000 was contributed by a private company that provides wireless communications services. While we did not find problems with the legality of the funding for the center, the use of coordinating council and public railways funds for this purpose could be questioned as not central to the mission of these entities.

Table 2.1: Funds Allocated for Presentation Center

SOURCE OF FUNDS	AMOUNT
S.C. Coordinating Council for Economic Development	\$1,200,000
S.C. Public Railways	800,000
Wireless communications company	100,000
TOTAL *	\$2,100,000

*Some funds from the presentation center account were spent for construction not related to the center.

Source: Department of Commerce.

Decisions That Increased Costs

The Department of Commerce wanted the presentation center to be "world class in every detail," from equipment to the room furnishings. The two primary components of costs for the center were the contracts for the equipment and construction. Both of these expenditures provide evidence that the agency's decisions about the center were not influenced by considerations of cost. The department spent over \$80,000 on video conferencing equipment that was unnecessary and has been dismantled. Commerce also increased the size of the projection screens, which significantly increased the cost of the construction contract. Furthermore, Commerce showed a disregard for cost in its selection of equipment and furniture.

Equipment

The Department of Commerce did not consider price when choosing a vendor to supply and install most of the equipment for the presentation center. It did, however, solicit and evaluate proposals from several companies. The department used four evaluation criteria to choose a vendor:

- Outline of solutions and methodologies to meet requirements.
- Qualifications and experience of vendor in providing similar solutions or economic development organizations.
- Client references.
- Ability to provide technical support and repair service.

Commerce officials stated they excluded price as one of the evaluating criteria because they were concerned primarily with getting a vendor capable of completing the project. Members of the department's selection panel did not receive any information about the costs of the proposals. They selected the winning vendor from three vendors that submitted proposals.

Even though the department removed price as one of the evaluation criteria, it still had the option to negotiate cost with the winning vendor. However, when a vendor was selected the department decided not to negotiate the price. The total cost of the contract was \$990,658.

As the agency got further into the project officials realized that they wanted to complete the entire center. The department purchased additional equipment by using a price-based competitive bid process. The total cost of these items was \$70,515. The vendor who was awarded the original contract bid on the additional equipment. It did not make the low bid for any item and was often the highest bidder.

Unused Equipment

The department spent more than \$80,000 for equipment and communication lines that have been disconnected. The presentation center has the capability to conduct multipoint video conferencing. Multipoint video conferencing occurs when multiple locations are called at once and all locations can view one another. Officials stated that the former chief of staff wanted in-house capability for multipoint video conferencing, so it became an important element of the center. In a memo dated May 30, 2002, a Commerce official stated that other options for this capability available at the time did not meet their needs because they required advance notice and were expensive. The department spent \$70,600 for the equipment which would allow it to make up to six calls at one time.

The department spent more than \$80,000 for equipment and communication lines that have been disconnected.

However, by early 2002 the department had not used the equipment for any meeting involving video conferencing. When faced with budget cuts, the department decided to disconnect the equipment to save telephone and maintenance costs. The installation of the 46 special lines necessary to support the multipoint video conferencing cost \$9,100, and had a monthly use fee of \$1,269. Officials stated they are negotiating with the technical college system to transfer the equipment to one of its locations.

The Department of Commerce now uses a bridging service to conduct its multipoint video conference calls. The agency pays a fee for each call to the company providing the bridging service. An official at Commerce said that most presentation facilities are using bridging services rather than providing their own multipoint video conferencing capabilities.

Unauthorized Procurement

The department violated the S.C. procurement code when it purchased \$70,886 in video editing equipment for the presentation center. The equipment was added because the department wanted to maintain a library of digital video. The equipment allows a standard video to be converted to a digital format, edited, and stored on a computer for retrieval. Commerce purchased the equipment from its primary equipment vendor. Since the equipment was not part of the original contract, the agency should have asked the Budget and Control Board to procure the equipment.

When we asked Commerce about the procurement, an agency official stated that there was confusion about when changes to the contract needed Budget and Control Board review. Subsequently, in March 2002 the department took action to obtain the board's retroactive approval of the procurement.

Furniture

Commerce showed a disregard for cost in its selection of furniture for the center. As shown in Table 2.2, the department selected expensive furniture. Total expenditures for furniture for the center were approximately \$139,000.

**Table 2.2: Furniture Expenditures
for the Presentation Center**

DESCRIPTION		COST PER ITEM	TOTAL COST
6	Lobby chairs	\$1,514 – \$1,883	\$10,079
40	Mid-back executive style chairs	\$1,217	48,694
8	High-back executive style chairs	\$1,446	11,569
10	Cherry tables 30 x 72	\$1,016	10,159
1	Credenza	\$2,169	2,169
1	Cherry fax machine cabinet	\$1,465	1,465
1	Table desk	\$2,174	2,174
TOTAL			\$86,309

Source: Department of Commerce.

Construction

The Department of Commerce also made some major improvements to its privately-leased office space to accommodate the presentation center. Since the agency's lease requires that the landlord handle all building improvements, the department had to go through its landlord to choose the contractor that would perform the construction. Two contractors submitted bids, and a panel comprised of the agency, landlord and its architect selected the higher bid. The original cost of the construction contract was \$434,397. By the time the contract was complete, the price had increased by 80% to \$780,000.

One costly decision altered the size of three projection screens in the main room. In the original plan the screens were six by eight feet; this size was chosen based on guidelines for determining optimum screen size according to the depth of the room. According to officials, the department changed the size of the screens because the former chief of staff wanted them larger. The increase in screen size to seven by nine feet required higher ceilings, which led to problems with the HVAC duct work and wiring and caused costs to escalate. According to a department official, the decision to increase the projection screen size by 25% was one of the leading causes of the cost increase in the construction contract.

There were other additions to the construction contract to improve the appearance of the center. Commerce spent \$5,400 to install white marble with black granite inserts in the lobby of the center. They also paid \$7,870 for elevator lobby trim surrounding the elevators, on the doors, and along the floor of the lobby. The main room has a remote controlled motorized drape system that cost \$6,131. Overall, the Department of Commerce spent almost \$800,000 renovating office space that is not state property.

By the time the contract was complete, the price had increased by 80% to \$780,000.

Budget and Control Board Approval

Budget and Control Board staff must approve leases and renovation projects. Staff stated that by the time Commerce involved them in the construction project it had already completed much of the planning and was in the process of awarding the construction contract. An official from the board said that if they were brought in sooner they might have been able to help Commerce trim some of the costs. Another official could not identify any other project where such extensive renovations were completed on office space leased from a private vendor. Budget and Control Board officials stated that they would only give approval for the project if the department renewed its lease for the office space. The department renewed its lease of 60,005 square feet for seven years beginning July 1, 2002.

Use of the Center

The use of the Department of Commerce's presentation center has been limited. According to agency records, from August 2001 to February 2002, there were 41 meetings totaling 130.5 hours held for prospects. One department official noted that the minimal usage might have to do with the economy and the decline in prospects visiting the state. According to Commerce documents, there was a 41% decrease in prospect visits to South Carolina from August–December 2000 to August–December 2001.

According to Commerce officials, its staff has made little use of a room designed as an internal working space for Commerce employees. An employee of the agency estimated that the room has been used between 15–20 hours. The room's equipment and furniture cost at least \$56,000. This room may have been another area where the department's resources could have been saved.

The department has a policy for making the center, with its capabilities for audiovisual presentations and video conferencing, available to other government agencies and economic development organizations. However, the guidelines for the use of the presentation center by outside groups have the following restrictions:

- Rooms used for meetings that are not directly associated with economic development are subject to approval by the information technology director.
- Activities not directly related to prospect interactions are subject to cancellation at any time in favor of prospect presentations.
- Government agencies and economic development allies are charged a fee of \$150–\$225 per hour.

As of February 2002 there had been one meeting, which lasted a total of four hours, conducted by an outside agency. A Commerce official stated that the room has not been marketed to these groups because an increase in traffic at the center could hinder the Department of Commerce's mission.

Recommendations

1. The Department of Commerce should carefully plan and budget for renovation projects. The department should purchase cost-effective items and comply with all applicable procurement laws and regulations.
2. The Department of Commerce should market the presentation center to other state agencies and make arrangements to ensure that these groups can be accommodated should a prospect want to use the facility at the same time.
3. The Department of Commerce should continue to maintain detailed records of the use of the presentation center by internal and external groups.

Special Events Fund and Prospect Expenses

Special Events Fund

To supplement its revenue, the Department of Commerce solicits contributions from businesses and other organizations, depositing the proceeds in a Special Events Fund. Out of this fund, Commerce has paid for economic development activities at special events such as the Heritage golf tournament, COMDEX information technology trade conferences, and Southeast United States (SEUS) trade conferences. Specific expenditures include receptions, meals, lodging, golf outings, and gifts to entertain economic development prospects. The department has also used the fund to pay for employee parties, picnics, lunches, dinners, and gifts. The solicitation of these funds may create a conflict of interest. Furthermore, some of the department's expenditures have violated state law.

Background

Commerce established the Special Events Fund in 1991 as an account with the State Treasurer and obtained an exemption from competitive purchasing requirements. The department has not received any other exemptions regarding the Special Events Fund. As a result, restrictions regarding the items that can be purchased with appropriated tax dollars apply to the Special Events Fund. Revenues from private sources become public when they are received by the department.

In 2000, fund revenues totaled \$663,955, including \$441,500 in contributions, while expenditures totaled \$464,871. In FY 2001, revenues totaled \$881,555, including \$587,000 in contributions, while expenditures totaled \$787,957. Revenues in addition to contributions included registration fees, corporate sponsorships, and funds transferred due to the closing of the department's Hong Kong office.

Solicitation of Contributions

Commerce officials have sent letters to potential donors asking for contributions of specific dollar amounts. In 2001, the amounts requested ranged from \$2,000 to \$50,000. This process creates a conflict of interest, because Commerce officials solicit contributions but also have the authority to influence public subsidies for contributors.

According to the department's management, "Commerce has no ability to provide 'subsidies' to contributors." However, in January 2002, the Department of Commerce awarded more than \$80 million in infrastructure grants to local government entities throughout South Carolina. State subsidies to local governments are often indirect subsidies for businesses.

The Secretary of Commerce is also the chairman and a voting member of the Coordinating Council for Economic Development, a related state entity staffed by Commerce employees. The Coordinating Council approves business and local government subsidies for items such as roads, water service, and sewer service, and also approves eligibility for business tax reductions. In addition, Commerce provides businesses with access to new customers. For example, a manufacturer recruited by Commerce could become a customer of a bank or utility that has contributed to the Special Events Fund. Finally, Commerce officials sometimes support legislation to expand economic incentives for businesses.

Because department officials have the authority to influence subsidies for businesses and local governments, there could be a perception that contributions to the department might affect the subsidies. Commerce officials reported that other states solicit contributions to pay for business recruitment and that South Carolina would be underfunded if it discontinued its solicitation of contributions. However, as noted in this report, Commerce has made questionable expenditures for a number of items, including its presentation center and travel, as well as employee parties, meals, and gifts (see Table 3.1). If the department had spent less in these areas, additional funds would have been available for business recruitment.

Expenses

A May 22, 1989, opinion of the South Carolina Attorney General stated that “. . . every expenditure of public funds must directly promote a public purpose.” This legal principal has been used repeatedly by the courts and the Attorney General in assessing the legality of various public expenditures in the state. Table 3.1 shows examples of Special Events Fund expenditures that may not directly promote a public purpose.

**Table 3.1: Examples of
Questionable Expenditures**

Some of the department's
expenditures have violated
state law.

EVENT	DATE	AMOUNT
Dinner and alcohol for employee Christmas party	12/99	\$10,011
"Koozie bag" gifts for employee picnic	06/00	\$1,917
Food, alcohol, and facility rental for employee picnic	06/00	\$3,404
Division luncheon	08/00	\$191
Round-trip airfare to Orlando, Florida for employee's spouse	11/00	\$527
Lunch for employee training seminar	12/00	\$407
Sterling bracelet gifts for employee Christmas party	12/00	\$2,321
Travel alarm clock gifts for employee Christmas party	12/00	\$1,596
Entertainment for employee Christmas party	12/00	\$1,200
Christmas cards for employee Christmas party	12/00	\$772
Dinner and alcohol for employee Christmas party	12/00	\$9,741
Division luncheon	05/01	\$283
Food, alcohol, and facility rental for employee picnic	06/01	\$3,759
Apartment cleanings (21) for an employee	01/00–12/01	\$3,360
Flower arrangements (3) for families of employees	01/01–12/01	\$179

Source: Department of Commerce.

It is not clear how the above expenditures directly promote a public purpose. The 1989 opinion stated that public funding of picnics and social events for governing body members and employees of a local government would be "improper." A May 21, 1993, opinion stated that "food for Christmas parties for university employees might well be in the same category of public fund expenditures discussed in the opinion[] dated . . . May 22, 1989." A September 12, 1995, opinion questioned the legality of using public funds for the sending of flowers.

In addition, State Comptroller General travel regulation 4.2.21.1.Q. states that, "[n]o reimbursement shall be made for meals within ten miles of an employee's official headquarters and/or residence." Each of the meals listed took place in the Columbia area.

Reforms

During our review of the department, the Governor created a Special Events Advisory Committee, comprised of academic and business professionals. The goal of the committee was to “establish guidelines and procedures for Special Events Fund expenditures.”

In February 2002, the committee made recommendations, endorsed by the Governor, that expenditures from the fund be limited to special marketing events, economic development programs, prospect expenses, and ally development (i.e., meals and receptions for local economic developers, county and municipal officials, etc.). In May 2002, Commerce amended its written policies to reflect the recommendations of the committee.

Recommendations

4. The General Assembly should consider amending state law to prohibit the solicitation of contributions by the Department of Commerce.
5. The Department of Commerce should ensure that its expenditures from the Special Events Fund are in compliance with state law and regulations.

Prospect Expenses

Commerce employees have been reimbursed inappropriately for “prospect expenses,” and we could not identify legal authority for some of these expenses. In our review we found that department employees were reimbursed for meals claimed as prospect expenses when no economic development prospects were present. Also, we could not identify any legal authority for the department to fund state employees’ meals when they are not traveling or to pay for meals in excess of state limits.

The Department of Commerce’s Travel and Expense Reimbursement Policies and Procedures Manual contains policies for reimbursing employees for the expenses incurred “while entertaining a prospect.” The policies allow employees to be reimbursed for meals and other expenses such as flowers, golf green fees, and gifts purchased for prospects. In practice, employees are reimbursed for their own meals and entertainment in addition to those of the prospects, and the normal state meal limits do not apply. The policies require the employee to submit paid receipts with the prospect’s or the project’s name written on the receipts. After the expense request forms are approved by a division director, Commerce submits the requests for payment to the Comptroller General’s office without the receipts. According to Comptroller

General and Commerce officials, the receipts are retained by the Commerce department to protect the confidentiality of the prospects. Under normal circumstances, state agencies submit documentation to the Comptroller General's office, which audits the payments to ensure they are appropriate.

Expenses Without Prospects

We reviewed a limited sample of prospect expense requests and the receipts associated with them and noted several problems. Employees were often reimbursed for expenses when there were no prospects present:

- Commerce employees were reimbursed for meals in Columbia when they were meeting only with other Commerce employees. The annotations on the receipts sometimes referred to what they discussed, such as "marketing program," or "miscellaneous projects."
- Commerce employees who were not traveling were reimbursed for meals with persons who were not prospects. Sometimes employees were reimbursed for a meal with other state employees, such as staff of the Governor's office or the Department of Revenue. An employee was reimbursed \$121 for lunch for Commerce administrative staff, a state procurement official, and contractors during the planning for the new presentation room (see p.3).
- Commerce staff were reimbursed for meals with local officials, such as county council members, park committees, and local development groups. These officials could be considered economic development allies, but were not prospects.

Many of the requests for prospect expenses were not properly documented. Some did not have receipts, and some of the receipts submitted were not annotated with the prospect's name or project, as required.

Legal Authorization for Employee' Meals

We could not identify legal authority for the Department of Commerce to pay for its employees' meals when they were not traveling or to pay in excess of state meal limits when they were. Provisos 72.36.I in the FY 00-01 and FY 01-02 appropriations acts state that "no expense shall be allowed an employee either at his place of residence or at the official headquarters of the agency by which he is employed" Section A of this proviso sets limits of \$25 and \$32 per day for meal reimbursements within and outside of South Carolina. The Comptroller General sets the policies implementing meal reimbursements. The only exception to the meal allowance, as well as the location requirements, allows employees to receive meals paid for with

public funds when they are not traveling if the meals are provided at statewide, regional or district meetings with 75% of those attending from other agencies or organizations. This circumstance would not cover most Commerce prospect entertainment.

The Department of Commerce does not pay for its employees' meals with prospects as travel expenses. Rather, it pays for prospect expenses as promotional services, defined by the Comptroller General as expenditures for services to promote agency projects, including expenditures for industrial prospects. Promotional services are contractual expenses, defined in the Comptroller General's regulations as "all expenditures for services, *other than by officials and employees of the state* [Emphasis Added], which involved the use of equipment, materials, or commodities." These expenditures do not apply to state employees and appear to be valid for specific services rather than meals or meetings. It is not appropriate for the department to pay for its employees' meals as promotional services.

It is longstanding practice for the department to reimburse its employees for meals with prospects, and these meals may cost well in excess of state meal limits. For example, a meal claimed as prospect expenses in Columbia for three Commerce employees and two additional persons cost \$308 (or \$62 per person). According to officials, if they are with prospects, Commerce employees eat where the prospects want to eat and do not limit their expenditures. Although the meals may benefit the economic development goals of the department, state law does not appear to authorize Commerce employees to be reimbursed for their meals in situations that do not comply with state regulations.

Recommendations

6. The Department of Commerce should ensure that it has appropriate management controls over prospect expenses.
7. The General Assembly should consider enacting legislation to clarify whether and under what conditions state employees may be reimbursed for meals and other expenses when entertaining economic development prospects.

Travel

We reviewed the Department of Commerce’s travel expenditures for FY 96-97 through FY 01-02. The department’s overall expenditures rose during the period, reaching a high of \$1.2 million in FY 99-00 (see Table 4.1). We reviewed a sample of travel vouchers and found that Commerce generally complied with state travel law and regulations. However, the department, and perhaps all state agencies, could benefit from statewide management of lodging and airfare costs. We also found that Commerce could achieve savings by closely monitoring the costs of the state vehicles it leases.

Table 4.1: Department of Commerce Travel Expenditures, FY 96-97 Through FY 00-01

CATEGORY	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Meals	\$60,099	\$74,986	\$71,332	\$91,793	\$78,361
Lodging	166,604	201,622	205,315	367,518	237,582
Airfare	107,178	153,770	189,038	240,459	203,601
Auto mileage/leases	150,245	180,064	240,262	248,196	252,990
Registrations	103,702	104,485	117,859	118,725	115,021
Other*	51,403	64,134	84,309	150,471	98,287
TOTAL	\$639,231	\$779,061	\$908,115	\$1,217,162	\$985,842

*Other includes nonstate employee travel, other transportation, and miscellaneous travel expense.

Source: Office of the Comptroller General.

Lodging Expenditures

We noted some cases in which Department of Commerce reimbursements for lodging expenditures could be considered excessive. South Carolina travel regulations do not limit the amount of reimbursement for lodging. Agency heads have the responsibility to determine that charges are “reasonable.” The federal government limits its employees to lodging rates published annually by the General Services Administration for domestic travel and the State Department for foreign travel.

We reviewed lodging expenditures in a nonrandom sample of 39 Department of Commerce travel vouchers. For some of the most expensive lodging, we compared expenditures to the federal limits for these locations at the time of the trip and found that Commerce staff far exceeded the federal limits (see Table 4.2).

**Table 4.2: Comparison of
Commerce Lodging Expenditures
With Federal Limits**

DATE	LOCATION	COST PER NIGHT*	NUMBER OF NIGHTS	FEDERAL LIMIT	% OVER FEDERAL LIMIT
07/98	Chicago	\$249	1	\$120	108%
03/99	Washington, DC	\$219	2	\$115	90%
04/99	Boston	\$275	1	\$105	162%
10/99	Los Angeles	\$245	5	\$95	158%
11/99	New York	\$390	2	\$195	100%
11/99	Las Vegas	\$305	3	\$55	455%
03/00	San Francisco	\$375	2	\$139	170%
06/00	Milan, Italy	\$757	1	\$144	426%
06/00	Paris, France	\$879	1	\$146	502%

*Cost does not include taxes.

Source: Department of Commerce, U.S. General Services Administration,
and State Department.

Department of Commerce officials stated that they sometimes incur high lodging costs because they have to stay where the prospects are staying. However, the agency's documentation does not indicate whether prospects are staying at the same location, and in some cases, more cost-effective choices were available.

Commerce employees
sometimes spent more than
twice the federal limits for
lodging.

The state of Louisiana limits the amount state employees can spend for lodging, based on the location. According to officials, its economic development agency has a waiver that allows staff, when it is necessary, to stay in the same location as a prospect. In these cases, employees may receive actual expenses up to 25% more than the state's maximum \$165 rate (\$206.25). North Carolina also has limits on the costs of lodging for state employees. Employees of the N.C. Department of Commerce may exceed these limits to receive the actual costs of lodging when they "are actually in company/traveling with client and not just calling on one or working on a particular project." This "with clients" status must be noted on their travel forms.

In our 1992 report, *Cost Savings for State Government: A Special Report*, we recommended that the General Assembly consider setting a limit on lodging reimbursement for both in-state and out-of-state travel. This could result in savings for all of state government. An exemption could be made for Department of Commerce staff when traveling in the company of a prospect.

Inappropriate Lodging Expense

The Department of Commerce paid for the Secretary of Commerce's apartment in Columbia as a travel expense. This expenditure was not authorized by law. Provisos 72.36.I. in the FY 99-00 and FY 00-01 appropriations acts state that "No expense shall be allowed an employee either at his place of residence or at *the official headquarters of the agency by which he is employed* [Emphasis Added]" State travel regulations for lodging expenses interpreting this law provide that "no reimbursement for overnight accommodations will be made within fifty miles of the traveler's official headquarters" The official headquarters of the Department of Commerce is in Columbia. However, in January 1999, the Secretary of Commerce wrote to the agency's director of finance and audit stating, "I hereby declare that my official headquarters for the South Carolina Department of Commerce will be in Charleston, South Carolina." The law does not appear to allow for this interpretation. For FY 99-00 and FY 00-01, expenditures for the apartment totaled \$20,280. The department also paid cleaning expenses for the apartment (see p. 13).

Recommendations

8. The General Assembly should consider enacting limits for lodging reimbursements for state employees. Waivers could be granted when employees document that staying in more expensive lodging was necessary, as when traveling in the company of an economic development prospect.
9. The Department of Commerce should ensure that its employees incur reasonable costs for lodging and require documentation that their travel was in the company of an economic development prospect if lodging expenditures are higher than reasonable norms.
10. The Department of Commerce should comply with state travel regulations.

Contract Airfares

Another recommendation in our 1992 cost savings report was that the state should use its bulk purchasing power to seek contracts with airlines for discount airfares. In FY 00-01, South Carolina state agencies spent more than \$8.3 million in airfare. If the state had obtained discounts on airfares, a significant amount in air travel costs could have been saved. Department of Commerce expenditures for airfare illustrate some of the reasons why a state contract would be beneficial.

Obtaining contracts with airlines for discounted airfares has been a long-standing practice used by the federal government and other states to reduce their travel costs. The federal government and the southeastern states of Louisiana, Mississippi, and Georgia have contracts for airfare. The contracts are typically rebid annually and guarantee airfares that are less than standard coach fares between sets of paired cities, such as between Columbia and Washington, D.C. While some of the contracts require that the tickets be purchased from a specific travel agency, others have multiple vendors from which employees may purchase tickets. Airline contracts eliminate the following practices which can increase costs:

- Purchasing nonrefundable tickets (and paying fees to change an itinerary).
- Traveling with a “Saturday night stayover” (extra lodging and food costs) to obtain lower fares.
- Paying a premium when airline tickets are not purchased well in advance of the flight.

Department of Commerce staff sometimes have to travel on short notice. Also, sometimes their itineraries change because of factors not in their control. At these times, they must pay high fares for flights (see Table 4.3).

**Table 4.3: High-Cost Airfares Paid
by the Department of Commerce**

DATE	DESTINATION*	FARE
09/99	Memphis, TN	\$813
05/00	Nashville, TN	\$830
09/00	Toronto, Ontario	\$1,283
09/00	Pittsburgh, PA	\$859
10/00	Los Angeles, CA	\$2,108
10/00	Chicago, IL	\$1,008
10/00	Detroit, MI	\$992
01/01	Montgomery, AL	\$824
01/01	Portland, OR	\$1,426
02/01	Philadelphia, PA	\$1,024

*All flights were round-trip from Columbia.

We reviewed the department’s invoices for air travel and found evidence that staff often obtained reduced fare, nonrefundable tickets that are less costly. However, we also noted that Commerce staff sometimes spent Saturday night in the destination city, resulting in increased meal and lodging costs, as well as possible inconvenience to employees. Also, on several occasions the department was billed a \$75 or \$100 fee when its staff had to change travel arrangements.

A Louisiana official reported that because of their contracts they save \$4–\$5 million a year in airfare.

More data on what agencies are paying for flights is needed in order to project how much could be saved from state contracts for airfare. For federal FY 98-99, the federal government awarded contracts for almost 5,800 city pairs at a 70% discount from the full fare. A Louisiana official reported that because of their contracts they save \$4–\$5 million a year in airfare. They compare the state price with the refundable ticket price at the time of booking. These projections probably overstate the amount of savings that South Carolina could obtain because employees often fly at reduced-fare, restricted prices. However, even a 10% savings would result in more than \$800,000 for the state and offer other advantages as well.

In June 2001, staff at the Budget and Control Board conducted a study which determined that it would be beneficial for the state to proceed with a state contract for discount airfare. However, according to officials, budget cuts delayed their plans for soliciting airfare contracts, and they plan to proceed in the near future.

Recommendation

11. The General Assembly should consider directing the Budget and Control Board to contract for airfare for state agencies and employees. The board should develop data necessary to determine savings from the airfare contracts.
-

Leased Cars

The Department of Commerce has spent too much for the cars it leases from the Budget and Control Board. In FY 00-01, the department spent 47¢ per mile for the cars it leased. It could have saved approximately \$60,000 if it had reimbursed its employees for the use of their own vehicles instead of leasing cars.

In FY 00-01, the department leased 27 state-owned vehicles from the Budget and Control Board for a total leasing cost of \$182,907. The agency also paid \$22,535 to park the vehicles in the parking garage adjacent to the department's office. Since many of the vehicles were not heavily used, the department's cost per mile was 47¢. In FY 00-01, the state paid an average of 33.5¢ per mile to reimburse state employees for the use of their own cars (if a state vehicle was not available). If Commerce had reimbursed employees instead of leasing vehicles, it could have saved \$60,000.

While it might not be desirable or appropriate for the department to require employees to use their own vehicles for agency travel, it should review the cost of its leased vehicles and take action to reduce the cost per mile. In late 2001 the department discontinued its lease of three vehicles. Commerce could consider meeting more of its vehicle needs by leasing vehicles on a daily basis from the Budget and Control Board motor pool near its main office. Although daily leasing costs more per day than monthly leasing, the net cost could be less if the department did not use its vehicles regularly. Commerce should continue to monitor costs and reduce the cost per mile for vehicle travel.

Recommendation

12. The Department of Commerce should monitor its cost per mile for auto travel and take action to reduce this cost.
-

Department of Commerce Aircraft

In this section, we describe the Department of Commerce's operation of passenger transportation aircraft. We found that the department has not reported the full cost of operating and owning its aircraft. As a result, the public is less able to assess the cost-effectiveness of state officials' travel. In certain instances, the department has incurred high costs for travel on its aircraft.

Types of Aircraft, Operating Cost, and Usage

From July 1996 through December 2001, Commerce owned the following aircraft:

- A 1975 LearJet 35, sold in March 2000.
- A 1983 Beech King Air B200, sold in November 1997.
- A 1990 Beech King Air 350, purchased in December 1997.
- A 3/16 "fractional" share of a 2000 Hawker 800XP, purchased in June 2000 from Raytheon Air Travel. Under this contract, Commerce has agreed to pay monthly and hourly fees and other miscellaneous charges. In return, Raytheon picks up South Carolina officials on request, providing pilots, maintenance, etc. For a reduced hourly fee, South Carolina officials sometimes fly on Raytheon aircraft that are less expensive than the Hawker 800XP. In November 2001, due to less than expected aircraft usage under the contract, Commerce sold a 1/16 share back to Raytheon.

As of March 2002, Commerce owned the Beech King Air 350 and a 1/8 share in the Hawker 800XP. Only the King Air 350 is flown and maintained by Commerce staff. Table 4.4 contains our estimate of the operating cost of the department's aircraft for its primary users.

The primary users of Commerce aircraft were the department, the Office of the Governor, and the General Assembly. Commerce has not billed these agencies for flight services. From FY 96-97 through FY 00-01, the department received more than \$266,000 in payments for flight services from other agencies that are billed a portion of the cost.

Table 4.4: LAC Estimate of Department of Commerce Aircraft Operating Cost

AGENCY	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	TOTAL	PERCENTAGE OF TOTAL
Department of Commerce	\$476,585	\$678,526	\$668,837	\$474,081	\$487,201	\$2,785,229	50.8%
Governor's Office	106,450	130,812	85,342	188,503	326,313	837,420	15.3%
Legislators	110,566	342,972	147,055	128,850	99,417	828,861	15.1%
Other State Agencies	234,304	264,859	242,259	213,559	71,543	1,026,525	18.7%
TOTAL	\$927,905	\$1,417,169	\$1,143,494	\$1,004,992	\$984,474	\$5,478,035	100.0%

Not included in this table are the ownership costs of aircraft depreciation and capital, which would have significantly increased costs. For example, in FY 00-01, adding ownership costs would have increased costs by more than 60% (see p. 25).

The FY 97-98 total includes a one-time payment of \$273,000 in pre-paid engine overhaul and repair services associated with the purchase of the department's King Air 350. The FY 97-98 total also includes \$100,000 to prepare the King Air B200 for sale and \$98,000 for interior painting and avionics equipment for the LearJet 35. The FY 98-99 total includes \$179,480 for a 12-year inspection of the department's LearJet 35.

Table 4.5 contains total flight hours and direct user flight hours flown on Department of Commerce aircraft. Direct user flight hours are the hours spent in the air by aircraft passengers and do not include "overhead flight hours" for pilot training, maintenance, and repositioning aircraft between assignments. Flight hours by Commerce have decreased in recent years.

Table 4.5: Hours Flown on Department of Commerce Aircraft

AGENCY	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	TOTAL
Department of Commerce	221	202	248	219	179	1,070
Governor's Office	51	35	33	92	143	355
Legislators	54	97	57	60	55	323
Other State Agencies	114	73	93	105	39	424
Overhead	31	99	28	42	21	222
TOTAL HOURS	471	507	460	518	437	2,393
Direct User Hours*	440	408	432	476	416	2,171

* Total hours minus overhead.

Cost Per Flight Hour Understated

The department understates the cost per flight hour of its aircraft. As a result, Commerce's cost calculations understate the extra cost of a trip on a Commerce aircraft vs. a commercial airline. In addition, Commerce does not report cost per flight hour calculations in its annual accountability report.

Operating Cost Per Flight Hour

Commerce excludes the cost of personnel when it calculates the operating cost per flight hour of its *fully-owned aircraft*. The department further understates the expense of operating its fully-owned aircraft by dividing its costs by "total flight hours" instead of "direct user flight hours." For its *fractionally-owned aircraft*, Commerce accurately calculates the total operating cost per flight hour, including personnel, by dividing payments to Raytheon Air Travel by direct user flight hours.

Table 4.6 contains a summary of operating costs per flight hour as reported by the department from FY 96-97 through FY 00-01. This is compared with our estimates of Commerce's total operating costs, including personnel, per direct user flight hour. Our estimates include costs in the years they were incurred. However, the costs would fluctuate less if agency officials allocated certain periodic maintenance costs over the relevant number of years.

Commerce's methodology significantly understates the department's operating cost per flight hour for the aircraft it operates.

Table 4.6: Operating Cost Per Flight Hour, Comparison of Commerce and LAC Estimates

	FY 96-97		FY 97-98		FY 98-99		FY 99-00		FY 00-01	
	COMMERCE	LAC*	COMMERCE	LAC*	COMMERCE	LAC*	COMMERCE	LAC*	COMMERCE	LAC*
LEARJET 35	\$959	\$2,317	\$1,402	\$3,006	\$1,803	\$3,482	\$1,019	\$2,370	NA	NA
KING AIR B200	\$535	\$1,933	\$1,219	\$2,964	NA	NA	NA	NA	NA	NA
KING AIR 350	NA	NA	\$531	\$4,715	\$726	\$2,106	\$713	\$1,978	\$807	\$1,814
RAYTHEON AIRCRAFT	NA	NA	NA	NA	NA	NA	NA	NA	\$3,877	\$3,877

*LAC estimates contain operating costs, including personnel, divided by direct user flight hours. See Tables 4.4 and 4.5.

The department has not reported the full cost of owning and operating its aircraft.

Ownership Cost Per Flight Hour

Commerce excludes aircraft depreciation and the cost of capital in its cost per flight hour calculations. Total depreciation and cost of capital in FY 00-01 were more than \$1,100 per flight hour for the King Air 350 and about \$2,800 for the Hawker 800XP. These ownership costs when combined with operation costs add more than 60% to the department's cost per flight hour. For a detailed description of the calculation of these costs, see Appendix B.

Federal Government Aircraft Cost Accounting

The Office of Management and Budget (OMB) requires that most federal agencies include specific items when accounting for aircraft costs.

OMB requires the recording of costs such as personnel, maintenance, fuel, insurance, depreciation, and cost of capital. Not all costs, however, are required to be used when justifying the use of government aircraft instead of commercial airlines or when establishing billing rates for nonagency users.

Nonmilitary, executive branch agencies are required to use OMB's methodology. Aircraft used in support of the President and Vice President are exempt.

Conclusion

If Commerce were to fully calculate and report the cost of operating and owning its aircraft, users would be better able to determine the cost-effectiveness of traveling on the department's aircraft instead of commercial airline or automobile. In addition, the public would be better able to assess the cost-effectiveness of travel decisions made by state officials.

High-Cost Flights

We reviewed a nonrandom sample of flights by Commerce staff or authorized by Commerce staff, primarily from FY 96-97 through FY 00-01. Table 4.7 contains a listing of high-cost flights, based on the department's flight records and LAC cost per flight hour calculations on page 24.

Table 4.7: Examples of High-Cost Flights

DATE	DESCRIPTION OF TRIP	AIRCRAFT	OPERATING COST*	OPERATING COST PER PASSENGER
07/08/98	One employee was transported round trip from Columbia, to Winston-Salem, NC.	LearJet 35	\$4,875	\$4,875
09/21/98	One employee was transported from Columbia to Spartanburg to Mt. Pleasant. The pilot then flew back to Columbia without a passenger.	King Air 350	\$3,580	\$3,580
08/16/99	An aircraft flew without a passenger to Charleston to pick up one employee, transported him to Columbia for a meeting, transported him back to Charleston, and returned to Columbia without a passenger.	King Air 350	\$2,967	\$2,967
12/07/00	One employee was transported one-way from West Palm Beach, Florida to Columbia.	Raytheon Contract	\$5,309	\$5,309
02/08/01	One employee was transported round trip from Charleston to Hilton Head Island.	Raytheon Contract	\$2,476	\$2,476
02/12/01	Four employees were transported round trip from Columbia to Spartanburg.	King Air 350	\$1,813	\$453
05/15/01	One employee was transported round trip from Asheville, NC, to Walterboro.	Raytheon Contract	\$4,611	\$4,611
08/10/01, 08/16/01	Two "confidential" passengers were transported round-trip from Los Angeles, CA, to Columbia.	Raytheon Contract	\$33,676	\$16,838

*Not included are the ownership costs of aircraft depreciation and capital (see p.25).

A department official stated that the cost of a flight, in certain instances, may be less important than saving time and/or giving a good impression to officials of a company considering South Carolina as a location. Nonetheless, the above flights indicate a need for Commerce to give greater attention to the use of its aircraft, with consideration for less expensive alternatives.

Recommendations

13. The Department of Commerce should include all operating and ownership costs when calculating and reporting its cost per flight hour. The department should include aircraft cost per flight hour data in its Annual Accountability Report.
14. The Department of Commerce should discontinue the use of its aircraft when less expensive alternatives are feasible.

Other Issues

Compliance With the Freedom of Information Act

The Department of Commerce adequately responded to citizens' requests for public information submitted from FY 96-97 through FY 00-01. In 1998, the General Assembly amended the Freedom of Information Act (FOIA), which required the department to disclose more information about incentives offered to prospective industries. We found that Commerce disclosed more information in response to requests made subsequent to the amendments. However, the department relied on the law as it existed when responding to requests for information that related to projects prior to the FOIA amendments. Also, Commerce does not disclose company-specific information regarding economic development prospects that decide not to locate in South Carolina. In addition, Commerce does not have a policy regarding fees charged to FOIA requesters and has charged some requesters but not others for processing requests.

Background and Amendments to the FOIA

The Freedom of Information Act, S.C. Code §30-4-10 *et seq.* governs which information must be disclosed by state agencies to the public. The act allows information about the state's economic development activities to be kept confidential in some circumstances. We found that South Carolina's FOIA laws are consistent with the disclosure requirements of other southeastern states.

The department has relied primarily on §§30-4-40(a)(1), (5), and (9) as a basis for denying information to requesters. For example, the department denied information regarding BMW and Michelin using these sections. Prior to the amendments effective June 12, 1998, the FOIA provided a blanket exemption for information related to the recruitment of industry to South Carolina. As a result of these amendments, Section 30-4-40(a)(5) requires disclosure of final contracts and documents that are "incidental to" those contracts entered into by the state, except to the extent that they contain "confidential proprietary information provided to a public body for economic development or contract negotiations." Currently, the department may exempt from disclosure trade secrets and "memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body to attract business or industry to invest within South Carolina."

Sample Results

We reviewed 19 (24%) of the 78 FOIA requests submitted to the Department of Commerce from FY 96-97 through FY 00-01. Commerce adequately responded to the FOIA requests in our sample (see Table 5.1). For 17 (89%) of the 19 requests, Commerce responded within the 15-day time frame established by the FOIA.

**Table 5.1: Department of
Commerce Response to FOIA
Requests in LAC Sample**

COMMERCE RESPONSE	NUMBER OF REQUESTS
Disclosed all information requested	7
Disclosed some information requested	7
Denied request	5
TOTAL	19

The department provided more information to requesters regarding projects or expenditures after the FOIA was amended. For example, a requester was provided a copy of property appraisals relating to land purchased by the State for “Project Spider.” The department also disclosed that the Coordinating Council for Economic Development approved an application by Spartanburg County for a \$500,000 grant for an extensive engineering study relating to an expansion by BMW.

In our review, we noted that the department did not limit its disclosure based on the source of funds. For example, Commerce provided a requester copies of itemized expenditures and reimbursements relating to the department’s Special Events Fund.

However, Commerce has relied on the law as it existed when responding to requests for information that related to projects prior to the FOIA amendments. For example, in a response to an FOIA requester asking for copies of contracts and correspondence relating to BMW, the department’s attorney responded:

Despite the increased disclosure requirements under section 30-4-40(a)(5) as amended, as a matter of law and policy, the Department of Commerce (‘DOC’) exempts from disclosure all information related to industrial recruitment prior to June 12, 1998 in accordance with the then existing law . . . DOC’s position is that, absent express retroactive application by the General Assembly, the increased disclosure requirements provided for in the 1998 amendments apply prospectively as of the effective date of those amendments, or June 12, 1998.

According to a Commerce official, information regarding prospects that decide not to locate in South Carolina is not disclosed under current law.

Blue Ribbon Panel Recommendations

In 2001, the Governor created a “blue ribbon panel”:

. . . for the purpose of reviewing and evaluating the policies of the South Carolina Department of Commerce related to the South Carolina Freedom of Information Act as well as making recommendations for changes to the Department’s policies and/or applicable statutes.

The five-member panel included representatives of business, education, and economic development organizations. The panel recommended amending the FOIA to clarify that documents related to final financial commitments must be disclosed after announcement or execution of final agreements.

The panel further recommended that the department should have additional statutory reporting requirements related to all incentive and grant programs administered by the agency. These other programs include the Set Aside Program, the Community Development Block Grant Program, and the Tourism Infrastructure Fund. Commerce is already required by statute to report to the House Ways and Means Committee, the Senate Finance Committee, and the Budget and Control Board regarding the Enterprise Program, which includes job development credits and retraining credits. Furthermore, the department must provide a report to the Governor and members of the General Assembly on the activities of the State’s Rural Infrastructure Fund.

Charges for Information

According to a department official, Commerce generally does not charge requesters for information. However, we found two instances where the department charged citizens for information. One requester was charged \$35, which included a \$15 administrative fee and \$1 per page for 20 copies. Another requester was charged \$77, which included \$37.50 per hour for two hours of staff time and \$2 for a compact disc. These charges were to convert the information provided to a different format. The law allows agencies to establish and collect fees “. . . not to exceed the actual cost of searching for or making copies of records.” If the department wishes to charge requesters for information, it should establish a written policy and apply the policy to all requesters.

Conclusion

We found no evidence that the Department of Commerce has not complied with the FOIA from FY 96-97 through FY 00-01. However, there may be a need for increased disclosure. Commerce will not disclose company-specific

information regarding prospects that decide not to locate in South Carolina. Moreover, the department relied on the law as it existed when responding to requests for information that related to projects prior to the FOIA amendments. The law requires disclosure of documents incidental to final contracts, but exempts “confidential proprietary information.” These criteria are open to interpretation as to which documents are incidental to final contracts and those which contain confidential proprietary information. The General Assembly should ensure the FOIA requires that adequate information be provided to the public regarding the performance of the department while not compromising the ability of the state to compete in the recruitment of business prospects.

Recommendations

15. The General Assembly should consider adopting the recommendations of the 2001 blue ribbon panel regarding the Freedom of Information Act (FOIA).
16. If the Department of Commerce wishes to charge for information supplied in response to FOIA requests, it should develop a written policy regarding charges for these requests. The policy should be consistent for all requesters and types of information requested.

Contract Management

We reviewed a nonstatistical sample of eight Department of Commerce contracts from FY 96-97 through FY 00-01. The contracts were for professional services and included consultants that were involved in the recruitment of high-tech industries, coordination of foreign trips, streamlining of Commerce divisions, civil engineering projects, producing economic development studies, and scouting locations for films. We reviewed the work of the contractors and generally found that the contracted services were provided. While we did not find material problems with the department’s management of the contracts, in some cases the department reimbursed its contractors for expenses that could be considered excessive.

One of the department’s consultants was retained to plan and coordinate the logistics for overseas trips involving high-ranking state government officials. His responsibilities included taking advance trips to meet with prospects and representatives from restaurants and hotels. We found that cost-effectiveness was not a priority on these overseas trips. There was no evidence that the department gave the contractor budgets for the trips. Rather, the contractor

The department reimbursed its contractors for expenses that could be considered excessive.

suggested budgets that he thought appropriate for the advance trips and the actual missions.

The consultant, in his advance trips, went to the exact locations the group would be visiting and stayed in the same hotels. In one case, he selected a London hotel that cost \$702 for the first night. The consultant felt that this hotel was too expensive, so he located another hotel for the group that cost \$287 per night. However, he continued to stay at the expensive hotel for three more nights for a total cost of \$2,408.

There was another occurrence where a consultant flew first-class from San Jose, California to Salt Lake City, Utah, and then from Salt Lake City to Cincinnati, Ohio. The consultant’s contract provided that expenses would be reimbursed in accordance with the applicable guidelines utilized by the agency. The state does not pay for first-class when domestic air travel is required, yet the department reimbursed the consultant.

Table 5.2 shows contractor expenditures that could be considered excessive. For example, the lodging rates shown in the table all exceeded federal per diem rates by at least 139%.

Table 5.2: Examples of Contractor Expenses

EXPENSE	DATES	TOTAL COST
Four nights in a London, England, hotel	05/08/99 – 05/11/99	\$2,408
Two nights in a Milan, Italy, hotel	05/17/00 – 05/18/00	\$913
Four nights in a Paris, France, hotel	05/19/00 – 05/22/00	\$1,679
Four nights in a Maui, Hawaii, hotel	11/11/00 – 11/14/00	\$2,246
Round-trip plane ticket from Austin, TX, to Maui	11/11/00 – 11/17/00	\$3,363

Source: Department of Commerce.

Recommendation

- 17. The Department of Commerce should ensure that its consultants incur reasonable costs for expenses in the course of providing services to the agency.

State Aviation Fund

We reviewed the funding sources and expenditures of the state aviation fund administered by the Department of Commerce's division of aeronautics. The funds are used to pave runways and make airfield improvements to airports in South Carolina.

In FY 00-01 and FY 01-02, the aviation fund received \$500,000 in state appropriations. The fund also receives approximately \$600,000 each year from aviation gasoline tax revenues. Grants are supported with federal, state, and local funds. Since 1997, 66 grants have been supported by the aviation fund. Thirty-six (55%) of these grants have been funded in part by the federal government. According to a Commerce official, if the Federal Aviation Administration (FAA) awards a grant, 90% of the grant is funded by the federal government. The official stated that the aeronautics division generally funds half of the airport owner's required 10% of the grant amount.

Although we found the expenditures made from the fund were appropriate, due to the state's General Fund deficit in FY 00-01, these funds could not be carried forward. This resulted in the loss of approximately \$382,000 in FY 00-01. Because the funds were lost, the division discontinued awarding grants for airport capital improvements and funded grants awarded in prior years with FY 01-02 revenues. Airport projects funded may not be completed within a fiscal year.

Recommendation

18. The General Assembly should consider allowing the Commerce Department's division of aeronautics to carry forward any state appropriations for aviation grants.

Audit Scope and Methodology

The audit focused on administrative issues identified by the audit requesters and excluded review of other aspects of the department's work. We did not review the department's management of individual programs or program results and outcomes. The period of review was FY 96-97 through FY 00-01, with focus on more recent periods in some areas.

We conducted interviews with Department of Commerce employees and employees of other state agencies. We contacted economic development and administrative officials in other states and reviewed their laws and policies. We reviewed records at the Department of Commerce and the Budget and Control Board as listed below.

- Accounting records and expenditure reports.
- Procurement records.
- Personnel records.
- Agency contracts.
- Flight records.
- Vehicle records.
- Records of meetings and correspondence.
- Agency reports and plans.

LAC staff also reviewed audits and management reports concerning the Department of Commerce. We measured the department's performance in complying with state laws and regulations and assessed management controls over expenditures and contractor performance.

The auditors used limited nonstatistical samples as described in the audit report. We conducted some limited tests of automated data produced by the agency that were used in the report; however, the reliability of this data was not central to our audit objectives. This audit was conducted in accordance with generally accepted government auditing standards.

Methodology for Determining Aircraft Ownership Costs

Commerce owns a 1990 Beech King Air 350 and a fractional share of a 2000 Hawker 800XP. For FY 00-01, we calculated the ownership costs of depreciation and capital for each aircraft.

Depreciation

Aircraft values can be estimated by consulting the *Aircraft Bluebook – Price Digest* or other recent sales price data. In FY 00-01, the market value of Commerce’s King Air 350 decreased from about \$3.13 million to about \$2.98 million or \$490 per flight hour. The market value of the department’s 3/16 fractional share of a Hawker 800XP decreased from about \$2.33 million to about \$2.17 million or \$1,490 per flight hour. It is important to note that, in some years, aircraft may have minimal depreciation or may appreciate.

Cost of Capital

A conservative measure of Commerce’s cost of capital for aircraft is the interest the state has foregone by using its funds to own aircraft. The South Carolina State Treasurer reports earning about 6.5% interest in FY 00-01 in a portfolio that included treasury securities, federal agency securities, and high-quality corporate bonds. In FY 00-01, Commerce’s King Air 350 had an average market value of about \$3.06 million, incurring a conservative cost of capital of \$199,000 (6.5% X \$3.06 million) or \$650 per flight hour. In the same year, the department’s 3/16 fractional share of a Hawker 800XP had an average market value of about \$2.25 million, incurring a conservative cost of capital of \$146,000 or \$1,300 per flight hour.

Agency Comments

Appendix B
Agency Comments



Jim Hodges
Governor

South Carolina

DEPARTMENT OF COMMERCE

Charles S. Way, Jr.
Secretary

July 3, 2002

Mr. George L. Schroeder
Director
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, SC 29201

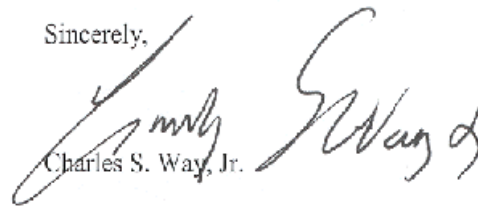
Dear Mr. Schroeder:

Enclosed please find a copy of the Final Response by the South Carolina Department of Commerce to the Legislative Audit Council Report.

We appreciate the opportunity to share our comments with you and wish to thank your staff for the professionalism and courtesy they demonstrated to the Department of Commerce throughout the audit process.

If you have any questions concerning this response, please do not hesitate

Sincerely,


Charles S. Way, Jr.

to contact me or, if I am unavailable, our legal counsel Karen Manning.

CSWjr/km

Enclosure

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**FINAL RESPONSE
BY
SOUTH CAROLINA DEPARTMENT OF COMMERCE
TO
LEGISLATIVE AUDIT COUNCIL REPORT**

During the past several months, the Legislative Audit Counsel (LAC) has worked cooperatively with the Department of Commerce to evaluate the agency's current and past operating practices. During their evaluation, the members of the LAC team examined hundreds of records, took the time to learn our business, and exhibited the utmost professionalism and courtesy. Out of the LAC's review came a wide variety of recommendations, most of which echo Commerce's current direction and thought.

The Department of Commerce's goal throughout this process has been to enhance the agency's ability to promote economic growth and prosperity in South Carolina while operating within the framework of state government and being fully accountable to the public. We believe that, with the LAC's help, the Department of Commerce has not only achieved that goal, it has also become a better- managed and more efficient agency.

Recommendations 1 through 3

1. *The Department of Commerce should carefully plan and budget for renovation projects. The Department should purchase cost effective items and comply with all applicable procurement laws and regulations.*
2. *The Department of Commerce should market the presentation center to other state agencies and make arrangements to ensure that these groups can be accommodated should a prospect want to use the facility at the same time.*
3. *The Department should continue to maintain detailed records of the use of the presentation center by internal and external groups.*

The Department of Commerce agrees with these recommendations and intends to budget for future renovation projects carefully, comply with all applicable procurement laws and regulations, and continue to maintain detailed records regarding use of the presentation center. The agency has already changed its policy regarding use of the center by other state agencies in a manner consistent with Recommendation 2.

Recommendation 4 and 5

4. *The General Assembly should consider amending state law to prohibit the solicitation of contributions by the Department of Commerce.*
5. *The Department of Commerce should ensure that its expenditures from the Special Events Fund are in compliance with state law and regulations.*

The Department of Commerce agrees that all expenditures from the Special Events Fund should be in compliance with state law and regulations. To that end and based on recommendations by the Special Events Fund Advisory Committee appointed by the Governor, the Department of Commerce has put formal guidelines and procedures in place governing Special Events Fund expenditures and will comply with those guidelines and procedures. Now that the formal guidelines and procedures are in place, the agency will complete annual independent financial and compliance audits of the Special Events Fund starting this year to supplement the financial audit already completed for 2001.

The Department of Commerce respectfully disagrees with Recommendation 4, which is based on the premise that all contributions to the Special Events Fund create a conflict of interest because the Department of Commerce, through the Coordinating Council for Economic Development, has the authority to influence whether infrastructure grants are made to local governments, which in turn may indirectly benefit a private business. Inherent in the LAC's premise is the assumption that contributors to the Special Events Fund, which has been in existence since 1991, expect some kind of *quid pro quo* for their contribution.

This assumption is simply inconsistent with the facts. Economic development is the tide on which all ships rise. If the economy grows, there is more business for everyone involved in the economic development process and a broader tax base to spread the burden of funding state and local government services. In a stagnant economy, our economic development allies, like banks, law firms, contractors, and others, can only grow their business by taking business away from competitors. At the same time, South Carolina companies have to shoulder a greater share of the state and local tax burden. Accordingly, companies and allies contribute to the Department of Commerce in order to support the state's economy, not because of an expectation of any kind of direct or indirect payback. When Commerce wins and the economy improves, everybody wins.

The solicitation and use of private funds to support economic development is a long-standing practice in all of the states that compete with South Carolina for economic development projects. Eliminating the ability of the Department of Commerce to raise private monies will place our state at a serious competitive disadvantage. On the other hand, allowing the private sector to support entertainment of prospects and allies makes good business and political sense. Why ask taxpayers to pay for prospect entertainment and ally development activities when the business community is willing to support them? Accordingly, we believe that the Special Events Fund is a valuable resource for South Carolina that should be retained.

Recommendations 6 and 7

6. The Department of Commerce should ensure that it has appropriate management controls over prospect expenses.

7. *The General Assembly should consider enacting legislation to clarify whether and under what conditions state employees may be reimbursed for meals and other expenses when entertaining economic development prospects.*

The Department of Commerce agrees with these recommendations and has no objection to legislative clarification regarding when state employees may be reimbursed for expenses associated with economic development prospect entertainment.

Recommendations 8 through 10

8. *The General Assembly should consider enacting limits for lodging reimbursements for state employees. Waivers could be granted when employees document that staying in more expensive lodging was necessary, as when traveling in the company of an economic development prospect.*
9. *The Department of Commerce should ensure that its employees incur reasonable costs for lodging and require documentation that their travel was in the company of an economic development prospect if lodging expenditures are higher than reasonable norms.*
10. *The Department of Commerce should comply with state travel regulations.*

The Department of Commerce fundamentally agrees with these recommendations and has no objection to legislation that would limit lodging reimbursements for state employees provided that waivers to the limits could be made when the necessity for lodging that exceeds these limits is adequately documented. With regard to Recommendation 10, while the Department of Commerce intends to comply with all laws and regulations governing state travel, the agency also intends to seek legislative clarification regarding when an agency head can be reimbursed for overnight lodging.

The LAC interprets state law to prohibit the reimbursement of overnight lodging for the Secretary of Commerce within 50 miles of Columbia. This interpretation means that the Secretary of Commerce, a volunteer, must be willing not only to work for free, but also to subsidize the state for overnight lodging costs. Alternatively, the Secretary must commute 244 miles to and from his home in Mount Pleasant each day he spends in Columbia at agency headquarters. Neither result makes sense.

The bottom line is that overnight lodging expenses for an out-of-town Secretary of Commerce are necessary and appropriate. After concluding that leasing an apartment for the Secretary would be more cost-effective than renting a hotel room two or three nights weekly, the Department of Commerce sought and obtained prior written approval from the State Budget and Control Board, the Governor's Office, and the State Ethics Commission. Therefore, the Secretary and the Department of Commerce assumed that leasing an apartment under these specific circumstances was in full compliance with all applicable state laws and regulations. In

light of what appear to be differing interpretations regarding whether state law permits reimbursement for these expenses, the Department of Commerce will seek legislative clarification from the General Assembly.

Recommendation 11

11. *The General Assembly should consider directing the Budget and Control Board to contract for airfare for state agencies and employees. The board should develop data necessary to determine savings from the airfare contracts.*

The Department of Commerce agrees with this recommendation and would welcome any cost savings realized from a Budget and Control Board contract governing airfare for state employees.

Recommendation 12

12. *The Department of Commerce should monitor its cost per mile for auto travel and take action to reduce this cost.*

The Department of Commerce agrees with this recommendation and has been monitoring costs related to the agency's automobile fleet. Because of declining usage over the last 18 months, the Department of Commerce has already reduced the agency's fleet by three cars, two of which were turned in a year ago. The agency continues to monitor and evaluate usage on an ongoing basis.

Recommendation 13

13. *The Department of Commerce should include all operating and ownership costs when calculating and reporting its cost per flight hour. The department should include aircraft cost per flight hour data in its Annual Accountability Report.*

The Department of Commerce agrees with this recommendation. The agency's Finance Division, rather than the Aeronautics Division, will assume responsibility for calculating and reporting cost per flight hour for agency aircraft and will include that data in the agency's Annual Accountability Report.

Recommendation 14

14. *The Department of Commerce should discontinue the use of its aircraft when less expensive alternatives are feasible.*

Fundamentally, the Department of Commerce does not disagree with the LAC's recommendation to drive or fly commercially rather than use the state plane when feasible to do so without compromising time spent with prospects. Prospects usually determine the mode of transportation required based on their own time constraints. For example, if a prospect from

Flint, Michigan wants to visit two or three potential project sites in South Carolina to determine whether our state will make the company's short list, but is unwilling to devote more than one full day for the visit (which is often the case), it would take at least two and possibly three commercial flights in each direction. The obvious result is that the prospect would spend the whole day on planes and in airports. Clearly, even though more costly, directing the state plane to pick the prospect up and fly directly to view sites in South Carolina makes smart business sense.

Recommendation 15

15. *The General Assembly should consider adopting the recommendations of the 2001 blue ribbon panel regarding the Freedom of Information Act (FOIA).*

The Department of Commerce has already embraced the recommendations of the Governor's Blue Ribbon Panel, which clarify disclosure obligations related to economic development activities under existing law. The Department of Commerce also supported H.4808 introduced by Speaker Wilkins during the 2002 legislative session, which proposed to codify the Blue Ribbon Panel's recommendations. Accordingly, the Department of Commerce has no objection to adoption by the General Assembly of these recommendations during the 2003 session.

Recommendation 16

16. *If the Department of Commerce wishes to charge for information supplied in response to FOIA requests, it should develop a written policy regarding charges for these requests. The policy should be consistent for all requesters and types of information requested.*

While the Department of Commerce has no formal policy regarding charges for responding to FOIA requests, the agency's unwritten policy has always been to provide information to requestors free of charge. The agency has deviated from this informal policy on occasion when circumstances justified a reasonable charge for copies or the administrative time spent responding to a particular request. While the Department of Commerce is reluctant to charge a fee for all FOIA requests, we will evaluate the need to develop such a policy based on the LAC's recommendation.

Recommendation 17

17. *The Department of Commerce should ensure that its consultants incur reasonable costs for expenses in the course of providing services to the agency.*

The Department of Commerce agrees with this recommendation and will ensure that all agency consultants and employees will incur reasonable costs for expenses.

Recommendation 18

18. *The General Assembly should consider allowing the Commerce Department's division of aeronautics to carry forward any state appropriations for aviation grants.*

The Department of Commerce agrees that the ability to carry forward state aviation grant funds is essential to maintain the integrity of the aviation grant program, and accordingly, has already sought and obtained an amendment to Part IB proviso 27.16 during the 2002 legislative session that enables carry forward of these funds.

The Budget and Control Board reviewed
“Contract Airfares” on pp. 19 – 21 of the report.

STATE OF SOUTH CAROLINA
State Budget and Control Board
OFFICE OF THE EXECUTIVE DIRECTOR

JIM HODGES, CHAIRMAN
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

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HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

ROBERT W. HARRELL, JR.
CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK FUSCO
EXECUTIVE DIRECTOR

July 9, 2002

Mr. George Schroeder
Director
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, SC 29201

Re: *An Administrative Review of the Department of Commerce*
Recommendation Regarding a State Contract Airfares

Dear George:

Thank you for the opportunity to comment on your report of the Department of Commerce. As only one item in the report addresses the Budget and Control Board, my comments will be limited to your recommendation that "The General Assembly should consider directing the Budget and Control Board to contract for airfare for state agencies and employees."

I have reviewed with Board staff the activities undertaken by the agency since the 1980s to put in place a contract airfare rate for state agencies. It is important to note that the members of the Budget and Control Board set broad policy for the state and are not involved in the daily administrative tasks of the agency that are the subject of this issue.

As most private passengers quickly discover, South Carolina and Columbia suffer from limited air service. Our ongoing analysis of this market indicates that states with large metropolitan areas and major airline hubs have had the most success negotiating discounts.

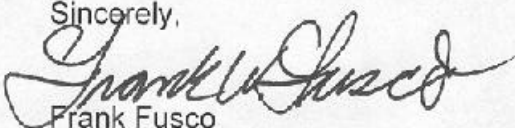
In the mid-1980s, the Board's Materials Management Office established a statewide term contract with a commuter airline, Freedom Airlines, for discount flights from Columbia to Washington, D.C. However, the contract ended after a year when the airline went into bankruptcy.

On four separate occasions from 1992-95, MMO solicited bids for airline transportation. In three cases, no airlines submitted a bid. In 1995, only one response was received. This proposal was from Air South, the startup airline largely funded with public grants in an effort to alleviate the state's air travel shortage. However, Air South's bid was higher than rates available on the open market and no award was made. Air South went out of business in 1997.

MMO revisited the airline contract idea in 1998, which included talks with a number of airline officials. The decision was made not to proceed with a solicitation. A key reason for this decision was that Delta, South Carolina's major carrier, would have required the state to create a central state government travel office or contract with one travel agency for all state business before they would even bid for a contract.

As you noted in your report, the staff of the Budget and Control Board again evaluated the potential for a successful solicitation for discount airfares in 2001. Of the five airlines with flights out of Columbia, two offer discount fares to certain destinations with stipulations. These discounts can be received simply by asking for them when making reservations and information about how to obtain them has been posted on the MMO website used by state agency procurement officials. Continental, Delta and US Airways do not offer discounts but said they would be willing to look at the state's specifications to determine if they would submit a bid.

Originally, MMO had hoped to issue a solicitation last fall. However, the extensive deadlines and demands of issuing procurements to establish the South Carolina Education Lottery required a delay in airline procurement process. We have now obtained the solicitation documents from Georgia, Mississippi, Louisiana, Texas and Utah, all of which have successful contracts for discount airfares. We are currently developing a request for proposals incorporating the best solutions from those solicitations. The solicitation is expected to be advertised within the month. We hope that market conditions will have improved and that it will be possible to put in place a contract that will save money for state agencies.

Sincerely,

Frank Fusco